

Terms & Conditions

MINT SEATING LIMITED STANDARD TERMS & CONDITIONS OF SALE February 2020

1. Definitions

1.1 In this Agreement: Mint means Mint Seating Limited of Unit 25, Darwen Enterprise Park, Railway Road, Darwen, Lancashire BB3 3EH. Buyer means person, partnership, company, authority or other undertaking who buys the Goods or Services. Clause means a clause of this Agreement. Contract means any agreement for the supply of Goods or Services which Mint is to provide to the Buyer. Goods means the goods or materials supplied or sold by Mint to the Buyer as specified in the Order Acknowledgement. Services means ancillary services either directly or indirectly related to the supply of the Goods by Mint to the Buyer. Order Acknowledgment means the document entitled "Order Acknowledgment" or with a similar title as generated by Mint and sent by post, fax or e-mail by Mint to the Buyer. Purchase Order means an order placed by or on behalf of the Buyer for the Goods or Services. Force Majeure Event means an event beyond the reasonable control of the party claiming the benefit (including its sub-contractors) including, without limitation, act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure in the supply of a utility or a significant price increase of power, fuel, raw material, component or transport.

2. Order and Specification

2.1 Unless otherwise expressly agreed in writing by Mint every Contract shall be governed in all respects by this Agreement.

2.2 All Purchase Orders for Goods or Services shall be deemed to be an offer by the Buyer to purchase Goods or Services pursuant to this Agreement.

2.3 Any quotation or similar document is not to be taken as an offer and no Contract shall take effect unless and until a Purchase Order is accepted by Mint in an Order Acknowledgement. Any acceptance by Mint shall always be on the provisions of this Agreement.

2.4 Where the Buyer transmits a Purchase Order or any other document by post or e-mail, the Buyer is solely responsible for any error or omission in the transmission thereof.

2.5 Any amendment or revision to a Purchase Order shall not be binding on Mint until such time as an adjustment price is agreed by Mint and accepted by Mint in a revised Order Acknowledgment.

2.6 Mint shall be entitled to rely in all respects and in all circumstances on the contents of the Order Acknowledgement as stating the quantity and description of the Goods or Services that are to be supplied. Accordingly, it shall be Buyer's sole responsibility to check the Order Acknowledgment and to notify Mint without delay after the receipt of the same where the Goods or Services are not properly stated in the Order Acknowledgment.

2.7 All descriptions, illustrations and information contained in Mint's catalogues, price lists, web site, advertising matter and other publications or any other collateral item relating to the Goods (including labels on packaging) are provided in good faith; however, no responsibility is accepted by Mint for their accuracy and they shall not form part of the Contract or be deemed to convey any warranty regarding the Goods or Services.

2.8 Variations in colour, finish, materials and other aspects of appearance may occur from time to time and no liability shall be accepted by Mint, however caused.

2.9 The Buyer acknowledges that in entering into the Contract, it has not relied upon any representation made by or on behalf of Mint save to the extent that any such representation is set forth in writing and expressly included in the Contract.

2.10 This Agreement shall always apply to the exclusion of any terms and conditions contained in or referred to in a Purchase Order or any other document submitted by the Buyer unless the variation is in writing and signed by a Director of Mint and the Buyer.

2.11 This Agreement supersedes any previous Agreement between the Buyer and Mint.

3. Prices

3.1 The price of the Goods or services will be stated in the Order Acknowledgment. Save to the extent that the contrary may be stated in the Order Acknowledgment, the price of the Goods or Services shall include delivery but exclude installation or fitting.

3.2 Save as expressly stated otherwise by Mint in writing, prices are quoted by Mint exclusive of Value Added Tax which Mint shall add to the invoice (and which the Buyer shall be liable to pay for) at the rate ruling at the time of the delivery.

4. Payment

4.1 Mint shall be entitled to submit an invoice to the Buyer at any time on or after the Goods have been delivered to the Buyer or Service performed for the Buyer.

4.2 The contract is divisible. Each delivery made hereunder:

- (i) Shall be deemed to arise from a separate contract, and
- (ii) Shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect or default in the delivery of any other instalment

4.3 The Buyer shall pay Mint's invoice in full within thirty (30) days from date of invoice.

4.4 The Buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been agreed by Mint in writing.

4.5 Mint shall be entitled to charge the Buyer simple interest on any sums paid late pursuant to a Contract from the due date until the date of payment. Such interest shall be calculated on annualised basis at the rate of eight per cent (8%) above the Bank of England base rate.

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5. Delivery and Inspection

5.1 Where Mint agrees or states a specified delivery date, Mint shall use reasonable endeavours to deliver on or before the relevant date, but Mint shall be under no legal obligation to do so. Mint shall not be liable in respect of any loss incurred by the Buyer arising from any delay in delivery of the Goods or any delay in the performance of any Service.

5.2 Mint shall be entitled to deliver the Goods or perform any Service by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between Mint and the Buyer.

5.3 Any failure, suspension or delay by Mint in respect of any part-delivery of the goods or the discovery of any defect in any of the Goods delivered or Services performed shall not entitle the Buyer to cancel the remainder of the contract and shall not affect the obligations of the Buyer in respect of the remainder of the Goods or Services under the Contract.

5.4 Delivery of Goods shall be to ground floor entrances only. The driver making the delivery will likely be unaccompanied and the Buyer is required to provide free assistance unloading the Goods upon delivery.

5.5 Save as expressly agreed otherwise by Mint in writing, the responsibility for the disposal of any packaging materials lies with the Buyer.

5.6 The Buyer shall inspect the Goods for any defect, shortage, damage or loss as soon as is practicable after actual delivery and shall give to Mint and the carrier notice in writing within 24 hours after actual delivery of any claim for any such defect, shortage, damage or loss. If the Buyer fails to do so, the Goods shall be conclusively presumed to have been received and accepted by Buyer without any claim for any defect, shortage, damage or loss.

6. Risk and Property

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time at which the Goods are ready for unloading by or on behalf of the Buyer.

6.2 Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to the Buyer until Mint has received in cash or cleared funds payment in full for the price of the Goods.

6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Mint's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Mint's property. Notwithstanding the previous sentence, the Buyer shall be entitled to resell or use the Goods or integrate the Goods with other products provided the Buyer does so in the ordinary course of its business.

6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in separate identifiable existence and have not been resold) Mint shall be entitled at any time to require the Buyer to deliver up the Goods to Mint and, if the Buyer fails to do so without delay, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Mint, but if the Buyer does so all monies owing by the Buyer to Mint shall (without prejudice to any other right or remedy of Mint) immediately become due and payable.

7. Failure to Accept Delivery when Tendered

7.1 Where any delay in delivery of the Goods is caused by the Buyer, Mint shall be entitled to charge the Buyer all proper costs arising out of such delay including without limitation the cost of returning the Goods to Mint's premises, of storing the Goods and of re-delivering the Goods.

7.2 Where any delay in delivery of any Services is caused by the Buyer, Mint shall be entitled to charge the Buyer all proper costs arising out of such delay including without limitation the wasted cost of having personnel and materials ready to deliver the Service.

8. Cancellation

8.1 Mint may cancel any Contract at any time before the Goods are delivered or Services performed by giving notice in writing. On giving such notice Mint shall promptly repay to the Buyer any sums paid in respect of the price. Mint shall not be liable for any loss or damage whatsoever arising from such cancellation.

8.2 Cancellation by the Buyer is not normally accepted. In the event of a Contract cancellation being accepted by Mint, Mint will levy a cancellation charge of either 20% of the value of the Purchase Order or the actual loss or expense arising from the cancellation, whichever is the greater.

9. Force Majeure

9.1 Neither party shall be under any liability to the other party in respect of any failure to perform or delay in performing any of its contractual obligations to the other party (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract.

9.2 The party claiming the benefit of a Force Majeure Event shall (i) give the other party notice as soon as reasonably practicable of the said Force Majeure Event; and (ii) use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the effect of the Force Majeure Event.

10. Insolvency of the Buyer

10.1 This clause applies where: (a) the Buyer makes any voluntary arrangement with its creditors or (being a company) goes into liquidation or has an administrator or administrative receiver appointed over the whole or any part of its assets or; (b) the Buyer ceases, or threatens to cease, to carry on business.

10.2 Where an Insolvency Event occurs then, without prejudice to any other right or remedy available to Mint, Mint shall be entitled to suspend any further deliveries under the Contract. **10.3** Where an Insolvency Event occurs and whether or not the Goods have been delivered or Services performed, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

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11. Warranty

11.1 Mint warrants that its manufactured products are free from manufacturing defects – in materials or workmanship – for a period of five years on Mint Seating ranges; this applies to the structural parts of the product. Two years on all moving parts of the product; subject to fair ‘wear and tear’.

11.2 At Mint’s sole discretion, Mint will repair or replace with comparable materials any product or component, which fails under normal use in a single shift environment, as a result of a defect in the materials or workmanship.

11.3 Soft seating that requires assembly is advised to be done by a Mint recommended installer. In the event that the dealer chooses to use its own installation team, warranty is waived at point of assembly due to the goods being handled by a third party.

12. Limitation of Liability

12.1 Save as expressly provided in this Agreement or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise howsoever arising are excluded to the fullest extent permitted by law. The Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods or Services for any particular purpose and the Buyer acknowledges that it is relying solely on the Buyer's own skill and judgment and not Mint’s in determining such suitability.

12.2 The charges levied by Mint on the Buyer pursuant to this Agreement are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. The Buyer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that the amount of damages awardable to the Buyer for a breach by Mint of this Agreement may be disproportionately greater than the price of the Goods.

12.3 The following provisions in this Clause set out Mint's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Buyer in respect of (a) a breach of Mint's contractual obligations or (b) a tortious act or omission for which Mint is liable or (c) an action arising out of a misrepresentation made by or on behalf of Mint; arising in connection with the performance or contemplated performance of this Agreement or out of an act done or omission made as a consequence of the entry into by Mint of this Agreement.

12.4 The total liability which Mint shall owe to the Buyer and in respect of all claims howsoever arising pursuant to this Agreement shall not exceed an amount equal to the price of the Goods or Services.

12.5 Mint shall in no circumstances be liable to the Buyer for any pure economic loss, loss of profit, loss of business or similar loss. Mint shall in no circumstances be liable to the Buyer for any indirect loss or consequential loss or damage.

13. Defects

13.1 The Buyer shall be liable to compensate Mint in respect of any claims or proceedings resulting from any injury, loss or damage caused by the use to which the Goods are put or a misuse of the Goods.

14. Severability

14.1 Illegality or unenforceability of any ones of these terms and conditions shall not affect the enforceability of the balance of these terms and conditions.

15. Waiver

15.1 Save in respect of a waiver granted in writing, the failure of Mint at any time to enforce a provision of this Contract shall not be deemed a waiver of such provision or of any other provision of this Contract or of Mint’s right thereafter to enforce that or any other provision of this Contract.

16. Assignment

16.1 The Buyer shall not be entitled to assign the benefit or burden of the whole or any part of any Contract without the prior written consent of Mint.

16.2 Mint may sub-contract the performance of its obligations as it sees fit, provided always that Mint shall remain responsible for the acts and omissions of its subcontractors.

17. Copyright

17.1 The copyright and all other intellectual property rights in all lists, descriptions, articles, drawings and other information produced by Mint shall remain the property of Mint at all times.

18. Confidentiality

18.1 Mint and the Buyer each agree to keep all information relating to the business, policies, accounts, activities of any nature, or other information where such knowledge is received in the course of transactions between the parties. Neither party shall divulge to any third party any information whatsoever relating to the other party, save only where such information is required by an employee or agent for the purpose of carrying out the obligations under this Agreement.

19. Jurisdiction in Law

19.1 The construction, validity and performance of these terms and conditions shall be governed in all respects by English Law and the Courts This Agreement shall be governed by English Law and the English courts.

19.2 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.